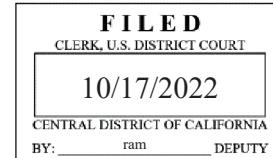


1 STEPHANIE S. CHRISTENSEN
2 Acting United States Attorney
3 SCOTT M. GARRINGER
4 Assistant United States Attorney
5 Chief, Criminal Division
6 SEAN D. PETERSON
7 Assistant United States Attorney
8 Chief, Riverside Branch Office
9 STEPHEN T. MERRILL (Cal. Bar No. 255827)
10 Special Assistant United States Attorney
11 Assistant United States Attorney
12 3403 Tenth Street, Suite 200
13 Riverside, California 92501
14 Telephone: (951) 276-6267
15 Facsimile: (951) 276-6202
16 E-mail: Stephen.Merrill@usdoj.gov



17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 ED CR No. 22-00098-JGB

23 Plaintiff,

24 v.
25 PLEA AGREEMENT FOR DEFENDANT
JOHN BIAGIANTI

26 JOHN BIAGIANTI,

27 Defendant.

28 1. This constitutes the plea agreement between John Biagianti ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

29 DEFENDANT'S OBLIGATIONS

30 2. Defendant agrees to:

1 a. Give up the right to indictment by a grand jury and,
2 at the earliest opportunity requested by the USAO and provided by the
3 Court, appear and plead guilty to a one-count information in the form
4 attached to this agreement as Exhibit A or a substantially similar
5 form, which charges defendant with Possession with Intent to
6 Distribute Fentanyl in violation of 21 U.S.C. §§ 841(a)(1),
7 (b) (1) (C).

8 b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered
12 for service of sentence, obey all conditions of any bond, and obey
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be
15 excluded for sentencing purposes under United States Sentencing
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
17 within the scope of this agreement.

18 f. Be truthful at all times with the United States
19 Probation and Pretrial Services Office and the Court.

20 g. Pay the applicable special assessment at or before the
21 time of sentencing unless defendant has demonstrated a lack of
22 ability to pay such assessments.

23 h. Defendant agrees that any and all criminal debt
24 ordered by the Court will be due in full and immediately. The
25 government is not precluded from pursuing, in excess of any payment
26 schedule set by the Court, any and all available remedies by which to
27 satisfy defendant's payment of the full financial obligation,
28 including referral to the Treasury Offset Program.

16 1. Not seek, argue for, or suggest in any way, either
17 orally or in writing, a sentence of less than 120 months
18 imprisonment.

THE USAO'S OBLIGATIONS

20 3. The USAO agrees to:

21 a. Not contest facts agreed to in this agreement.

22 b. Abide by all agreements regarding sentencing contained
23 in this agreement.

1 at the time of sentencing the Court may consider any dismissed
2 charges in determining the applicable Sentencing Guidelines range,
3 the propriety and extent of any departure from that range, and the
4 sentence to be imposed.

5 d. At the time of sentencing, provided that defendant
6 demonstrates an acceptance of responsibility for the offense up to
7 and including the time of sentencing, recommend a two-level reduction
8 in the applicable Sentencing Guidelines offense level, pursuant to
9 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
10 additional one-level reduction if available under that section.

11 NATURE OF THE OFFENSE

12 4. Defendant understands that for defendant to be guilty of
13 the crime charged in the superseding information, that is, Possession
14 with Intent to Distribute Fentanyl, in violation of Title 21, United
15 States Code, Sections 841(a)(1), (b)(1)(C), the following must be
16 true:

- 17 a. First, defendant knowingly possessed fentanyl;
- 18 b. Second, defendant knew that it was fentanyl or some
19 other federally controlled substance; and
- 20 c. Third, defendant intended to distribute it to another
21 person.

22 PENALTIES AND RESTITUTION

23 5. Defendant understands that the statutory maximum sentence
24 that the Court can impose for a violation of Title 21, United States
25 Code, Sections 841(a)(1), (b)(1)(C), is: 20 years' imprisonment; a
26 lifetime period of supervised release; a fine of \$1,000,000 or twice
27 the gross gain or gross loss resulting from the offense, whichever is
28 greatest; and a mandatory special assessment of \$100.

1 6. Defendant understands that the statutory mandatory minimum
2 sentence that the Court must impose for a violation of 21 U.S.C.
3 §§ 841(a)(1), (b)(1)(C), is: a 3-year period of supervised release in
4 addition to any term of imprisonment, and a mandatory special
5 assessment of \$100.

6 7. Defendant understands that defendant will be required to
7 pay full restitution to the victim(s) of the offense to which
8 defendant is pleading guilty. Defendant agrees that, in return for
9 the USAO's compliance with its obligations under this agreement, the
10 Court may order restitution to persons other than the victim(s) of
11 the offense to which defendant is pleading guilty and in amounts
12 greater than those alleged in the count to which defendant is
13 pleading guilty. In particular, defendant agrees that the Court may
14 order restitution to any victim of any of the following for any
15 losses suffered by that victim as a result: (a) any relevant conduct,
16 as defined in U.S.S.G. § 1B1.3, in connection with the offense to
17 which defendant is pleading guilty; and (b) any counts dismissed
18 pursuant to this agreement as well as all relevant conduct, as
19 defined in U.S.S.G. § 1B1.3, in connection with those counts.

20 8. Defendant understands that supervised release is a period
21 of time following imprisonment during which defendant will be subject
22 to various restrictions and requirements. Defendant understands that
23 if defendant violates one or more of the conditions of any supervised
24 release imposed, defendant may be returned to prison for all or part
25 of the term of supervised release authorized by statute for the
26 offense that resulted in the term of supervised release, which could
27 result in defendant serving a total term of imprisonment greater than
28 the statutory maximum stated above.

1 9. Defendant understands that under 21 U.S.C. § 862a,
2 defendant will not be eligible for assistance under state programs
3 funded under the Social Security Act or Federal Food Stamp Act or for
4 federal food stamp program benefits, and that any such benefits or
5 assistance received by defendant's family members will be reduced to
6 reflect defendant's ineligibility.

7 10. Defendant understands that, by pleading guilty, defendant
8 may be giving up valuable government benefits and valuable civic
9 rights, such as the right to vote, the right to possess a firearm,
10 the right to hold office, and the right to serve on a jury. Defendant
11 understands that he is pleading guilty to a felony and that it is a
12 federal crime for a convicted felon to possess a firearm or
13 ammunition. Defendant understands that the conviction in this case
14 may also subject defendant to various other collateral consequences,
15 including but not limited to revocation of probation, parole, or
16 supervised release in another case and suspension or revocation of a
17 professional license. Defendant understands that unanticipated
18 collateral consequences will not serve as grounds to withdraw
19 defendant's guilty plea.

20 11. Defendant and his counsel have discussed the fact that, and
21 defendant understands that, if defendant is not a United States
22 citizen, the conviction in this case makes it practically inevitable
23 and a virtual certainty that defendant will be removed or deported
24 from the United States. Defendant may also be denied United States
25 citizenship and admission to the United States in the future.
26 Defendant understands that while there may be arguments that
27 defendant can raise in immigration proceedings to avoid or delay
28 removal, removal is presumptively mandatory and a virtual certainty

1 in this case. Defendant further understands that removal and
2 immigration consequences are the subject of a separate proceeding and
3 that no one, including his attorney or the Court, can predict to an
4 absolute certainty the effect of his conviction on his immigration
5 status. Defendant nevertheless affirms that he wants to plead guilty
6 regardless of any immigration consequences that his plea may entail,
7 even if the consequence is automatic removal from the United States.

8 FACTUAL BASIS

9 12. Defendant admits that defendant is, in fact, guilty of the
10 offense to which defendant is agreeing to plead guilty. Defendant
11 and the USAO agree to the statement of facts provided below and agree
12 that this statement of facts is sufficient to support a plea of
13 guilty to the charge described in this agreement and to establish the
14 Sentencing Guidelines factors set forth in paragraph 14 below but is
15 not meant to be a complete recitation of all facts relevant to the
16 underlying criminal conduct or all facts known to either party that
17 relate to that conduct.

18 On August 8, 2021, in Riverside County within the Central
19 District of California, defendant possessed fentanyl with intent to
20 distribute it to another. He, in fact, distributed the fentanyl to
21 K.D., the use of which resulted in K.D.'s death on or about August 9,
22 2021.

23 Specifically, on the evening of August 8, 2021, defendant drove
24 to Riverside, California, met with K.D., and sold her approximately
25 \$40 worth of powder fentanyl. Defendant knew that the powder
26 contained fentanyl or some other federally controlled substance.
27 K.D. used the fentanyl on or about August 9, 2021, and died as a
28 result of using the fentanyl that defendant sold her.

SENTENCING FACTORS

13. Defendant understands that in determining defendant's sentence the Court is required to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Sentencing Guidelines are advisory only, that defendant cannot have any expectation of receiving a sentence within the calculated Sentencing Guidelines range, and that after considering the Sentencing Guidelines and the other § 3553(a) factors, the Court will be free to exercise its discretion to impose any sentence it finds appropriate up to the maximum set by statute for the crime of conviction.

14 14. Defendant and the USAO agree to the following applicable
15 Sentencing Guidelines factors:

16 Base Offense Level: 38 U.S.S.G. § 2D1.1(a)(2)
17 Defendant and the USAO reserve the right to argue that additional
18 specific offense characteristics, adjustments, and departures under
19 the Sentencing Guidelines are appropriate.

20 15. Pursuant to U.S.S.G. §§ 1B1.2(a) and (c), the parties
21 stipulate that the defendant committed a separate violation of 21
22 U.S.C. § 841(b)(1)(C) (distribution of controlled substances
23 resulting in death), in that, on or about August 8, 2021, the
24 defendant knowingly and intentionally distributed fentanyl, the use
25 of which resulted in the death of K.D., and that such overdose death
26 resulting from the defendant's distribution of fentanyl constitutes a
27 more serious offense than the offense of conviction for purposes of
28 calculating the applicable Sentencing Guidelines offense level.

1 Accordingly, pursuant to U.S.S.G. §§ 2D1.1(a)(2), 1B1.2(a) and
2 1B1.2(c), the parties stipulate that the Court should calculate the
3 Sentencing Guidelines as if defendant had been convicted of the
4 offense described in this paragraph and apply a base offense level
5 38. The parties further stipulate that application of such a base
6 offense level, which is greater than the base offense level that
7 would otherwise apply, is independently supported by U.S.S.G. §
8 5K2.1. Defendant will not recommend, argue, or otherwise suggest
9 that the Court impose a base offense level other than 38.

10 16. Defendant understands that there is no agreement as to
11 defendant's criminal history or criminal history category.

12 17. Defendant and the USAO reserve the right to argue for a
13 sentence outside the sentencing range established by the Sentencing
14 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
15 (a)(2), (a)(3), (a)(6), and (a)(7).

16 WAIVER OF CONSTITUTIONAL RIGHTS

17 18. Defendant understands that by pleading guilty, defendant
18 gives up the following rights:

19 a. The right to persist in a plea of not guilty.

20 b. The right to a speedy and public trial by jury.

21 c. The right to be represented by counsel -- and if
22 necessary have the Court appoint counsel -- at trial. Defendant
23 understands, however, that, defendant retains the right to be
24 represented by counsel -- and if necessary have the Court appoint
25 counsel -- at every other stage of the proceeding.

26 d. The right to be presumed innocent and to have the
27 burden of proof placed on the government to prove defendant guilty
28 beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTION

19. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty plea was involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's conviction on the offense to which defendant is pleading guilty. Defendant understands that this waiver includes, but is not limited to, arguments that the statute to which defendant is pleading guilty is unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's plea of guilty.

LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

20. Defendant agrees that, provided the Court imposes a total term of imprisonment on all counts of conviction of no more than 210 months, defendant gives up the right to appeal all of the following:

(a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the Court, provided it is within the

statutory maximum; (d) to the extent permitted by law, the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (f) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (g) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in Second Amended General Order 20-04 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

21. The USAO agrees that, provided (a) all portions of the sentence are at or below the statutory maximum specified above and (b) the Court imposes a term of imprisonment of no less than 168 months, the USAO gives up its right to appeal any portion of the sentence.

RESULT OF WITHDRAWAL OF GUILTY PLEA

22. Defendant agrees that if, after entering a guilty plea pursuant to this agreement, defendant seeks to withdraw and succeeds in withdrawing defendant's guilty plea on any basis other than a claim and finding that entry into this plea agreement was involuntary, then (a) the USAO will be relieved of all of its obligations under this agreement; and (b) should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then (i) any applicable statute of limitations will be tolled between the date of defendant's signing of this agreement and the filing commencing any such action; and (ii) defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such action, except to the extent

1 that such defenses existed as of the date of defendant's signing this
2 agreement.

3 EFFECTIVE DATE OF AGREEMENT

4 23. This agreement is effective upon signature and execution of
5 all required certifications by defendant, defendant's counsel, and an
6 Assistant United States Attorney.

7 BREACH OF AGREEMENT

8 24. Defendant agrees that if defendant, at any time after the
9 signature of this agreement and execution of all required
10 certifications by defendant, defendant's counsel, and an Assistant
11 United States Attorney, knowingly violates or fails to perform any of
12 defendant's obligations under this agreement ("a breach"), the USAO
13 may declare this agreement breached. All of defendant's obligations
14 are material, a single breach of this agreement is sufficient for the
15 USAO to declare a breach, and defendant shall not be deemed to have
16 cured a breach without the express agreement of the USAO in writing.
17 If the USAO declares this agreement breached, and the Court finds
18 such a breach to have occurred, then: (a) if defendant has previously
19 entered a guilty plea pursuant to this agreement, defendant will not
20 be able to withdraw the guilty plea, and (b) the USAO will be
21 relieved of all its obligations under this agreement.

22 25. Following the Court's finding of a knowing breach of this
23 agreement by defendant, should the USAO choose to pursue any charge
24 that was either dismissed or not filed as a result of this agreement,
25 then:

26 a. Defendant agrees that any applicable statute of
27 limitations is tolled between the date of defendant's signing of this
28 agreement and the filing commencing any such action.

1 b. Defendant waives and gives up all defenses based on
2 the statute of limitations, any claim of pre-indictment delay, or any
3 speedy trial claim with respect to any such action, except to the
4 extent that such defenses existed as of the date of defendant's
5 signing this agreement.

6 c. Defendant agrees that: (i) any statements made by
7 defendant, under oath, at the guilty plea hearing (if such a hearing
8 occurred prior to the breach); (ii) the agreed to factual basis
9 statement in this agreement; and (iii) any evidence derived from such
10 statements, shall be admissible against defendant in any such action
11 against defendant, and defendant waives and gives up any claim under
12 the United States Constitution, any statute, Rule 410 of the Federal
13 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
14 Procedure, or any other federal rule, that the statements or any
15 evidence derived from the statements should be suppressed or are
16 inadmissible.

17 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

18 OFFICE NOT PARTIES

19 26. Defendant understands that the Court and the United States
20 Probation and Pretrial Services Office are not parties to this
21 agreement and need not accept any of the USAO's sentencing
22 recommendations or the parties' agreements to facts or sentencing
23 factors.

24 27. Defendant understands that both defendant and the USAO are
25 free to: (a) supplement the facts by supplying relevant information
26 to the United States Probation and Pretrial Services Office and the
27 Court, (b) correct any and all factual misstatements relating to the
28 Court's Sentencing Guidelines calculations and determination of

1 sentence, and (c) argue on appeal and collateral review that the
2 Court's Sentencing Guidelines calculations and the sentence it
3 chooses to impose are not error, although each party agrees to
4 maintain its view that the calculations in paragraph 14 are
5 consistent with the facts of this case. While this paragraph permits
6 both the USAO and defendant to submit full and complete factual
7 information to the United States Probation and Pretrial Services
8 Office and the Court, even if that factual information may be viewed
9 as inconsistent with the facts agreed to in this agreement, this
10 paragraph does not affect defendant's and the USAO's obligations not
11 to contest the facts agreed to in this agreement.

12 28. Defendant understands that even if the Court ignores any
13 sentencing recommendation, finds facts or reaches conclusions
14 different from those agreed to, and/or imposes any sentence up to the
15 maximum established by statute, defendant cannot, for that reason,
16 withdraw defendant's guilty plea, and defendant will remain bound to
17 fulfill all defendant's obligations under this agreement. Defendant
18 understands that no one -- not the prosecutor, defendant's attorney,
19 or the Court -- can make a binding prediction or promise regarding
20 the sentence defendant will receive, except that it will be within
21 the statutory maximum.

22 NO ADDITIONAL AGREEMENTS

23 29. Defendant understands that, except as set forth herein,
24 there are no promises, understandings, or agreements between the USAO
25 and defendant or defendant's attorney, and that no additional
26 promise, understanding, or agreement may be entered into unless in a
27 writing signed by all parties or on the record in court.

28

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

30. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

STEPHANIE S. CHRISTENSEN
Acting United States Attorney

STEPHEN T. MERRILL
Special Assistant, U.S. Attorney

John Biagianti
JOHN BIAGIANTI
Defendant

DAVID E. WOHL
Attorney for Defendant
JOHN BIAGIANTI

10-14-22

Date

10-13-2027

Date

Date

Date

CERTIFICATION OF DEFENDANT

20 I have read this agreement in its entirety. I have had enough
21 time to review and consider this agreement, and I have carefully and
22 thoroughly discussed every part of it with my attorney. I understand
23 the terms of this agreement, and I voluntarily agree to those terms.
24 I have discussed the evidence with my attorney, and my attorney has
25 advised me of my rights, of possible pretrial motions that might be
26 filed, of possible defenses that might be asserted either prior to or
27 at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a),
28 of relevant Sentencing Guidelines provisions, and of the consequences

1 of entering into this agreement. No promises, inducements, or
2 representations of any kind have been made to me other than those
3 contained in this agreement. No one has threatened or forced me in
4 any way to enter into this agreement. I am satisfied with the
5 representation of my attorney in this matter, and I am pleading
6 guilty because I am guilty of the charge and wish to take advantage
7 of the promises set forth in this agreement, and not for any other
8 reason.



JOHN BIAGIANTI
Defendant

10-13-2022

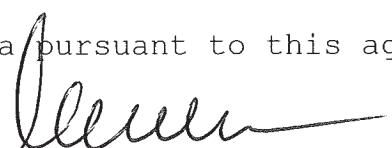
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am John Biagianti's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set

///

1 forth in this agreement is sufficient to support my client's entry of
2 a guilty plea pursuant to this agreement.

3 
4 DAVID E. WOHL
5 Attorney for Defendant
JOHN BIAGIANTI

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10 Date
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10/13/22

Exhibit A

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

ED CR No. 21-00098 (A)-JGB

Plaintiff,

S U P E R S E D I N G
I N F O R M A T I O N

v.

[21 U.S.C. §§ 841(a)(1),
(b)(1)(C): Possession with Intent
to Distribute Fentanyl]

JOHN BIAGIANTI,

Defendant.

The United States Attorney charges:

[21 U.S.C. §§ 841(a)(1), (b)(1)(C)]

On or about August 8, 2021, in Riverside County, within the
Central District of California, defendant JOHN BIAGIANTI knowingly

///

///

1 and intentionally possessed with intent to distribute fentanyl, a
2 Schedule II narcotic drug controlled substance.

3
4 STEPHANIE S. CHRISTENSEN
5 Acting United States Attorney
6

7 SCOTT M. GARRINGER
8 Assistant United States Attorney
9 Chief, Criminal Division

10 SEAN D. PETERSON
11 Assistant United States Attorney
12 Chief, Riverside Branch Office

13 STEPHEN T. MERILL
14 Special Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I, Stephanie Ascencio, declare:

That I am a citizen of the United States and a resident of or employed in Riverside County, California; that my business address is the Office of United States Attorney, 3403 Tenth Street, Suite 200, Riverside, California 92501; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: **PLEA AGREEMENT FOR**

DEFENDANT JOHN BIAGIANTI

- Placed in a closed envelope for collection and inter-office delivery, addressed as follows:
- Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:
- By hand delivery, addressed as follows:
- By email delivery, as follows: **SEE ATTACHED**
- By messenger, as follows:
- By Federal Express, as follows:

This Certificate is executed on **October 17, 2022**, in Riverside, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/ *Stephanie Ascencio*

Stephanie Ascencio
Legal Assistant

1 **ATTACHMENT**

2 DAVID WOHL
3 Wohl Law APC
4 4255 Main Street
Riverside, CA 92501
DEW@WOHLLAWFIRM.COM

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